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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/631,239	07/31/2003	Gregory W. Smiley	780139.00019	1736
26710	7590	06/06/2005	EXAMINER	
QUARLES & BRADY LLP 411 E. WISCONSIN AVENUE SUITE 2040 MILWAUKEE, WI 53202-4497			DUNN, DAVID R	
		ART UNIT	PAPER NUMBER	3616

DATE MAILED: 06/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/631,239	SMILEY ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	David Dunn	3616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
 THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-28 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 31 July 2003 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) All    b) Some \* c) None of:
      1. Certified copies of the priority documents have been received.
      2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
      3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date 10/9/03.
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### *Information Disclosure Statement*

1. The information disclosure statement filed October 9, 2003 is acknowledged. See enclosed IDS form.

### *Drawings*

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: "4" (see Figure 5).

Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### *Double Patenting*

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed.

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Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-28 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 16 and 8-23 of copending Application No. 10/631,237. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to one of ordinary skill in the art at the time the invention was made that the first direction and the second direction would be the fore and aft direction, respectively, as these are the main directions that the vehicle would travel. Additionally, other such features as a smooth twist grip, a plastic grip, and a horn actuator would have been obvious to include as these features are old and well known in the art.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

#### *Claim Rejections - 35 USC § 112*

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "the first and second operator control handles" and "the lift truck". There is insufficient antecedent basis for these limitations in the claim. Claims 2 and 3 repeat these limitations.

Claims 7 and 8 recite the limitation "the aft operator control". There is insufficient antecedent basis for this limitation in the claims. It appears that this phrase should be --the aft operator control handle--.

Claim 8 is also unclear as the operator control does not include a steering wheel. The steering wheel is a separate control (see Figure 1). However, applicant may actually intend for this phrase ("the aft operator control") in claim 8 to be broader than the handle; if this is the case, the phrase should be provided with proper antecedent basis.

Note: claim 9 recites "the an aft operator control"; the word "an" should be deleted.

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haack et al. (6,564,906) in view of Gilliland et al. (5,595,259).

Haack et al. disclose a material handling vehicle, comprising: an operator compartment (211; see Figure 4); a fore operator control handle (225) for selecting a direction and a speed of travel (see description of similar controller- column 5, lines 19-24) being mounted at a first end

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of the operator compartment and configured for operation in a fore vehicle direction; an aft operator control handle (225') for selecting a direction and a speed of travel; and a traction system (see column 4, lines 52-55) controlled by the first and second operator control handles to drive the lift truck whereby the operator can control the traction system while facing either of the end of the compartment. Haack et al. discloses a floor switch (249). Regarding claim 7, the aft operator control is mounted at an angle to the side of the compartment (any orientation would be "at an angle") to be perpendicular of the arm of the operator when operating the control (this limitation would depend on the position of the operator). The operator control includes a steering wheel (223 and 223').

Haack et al. does not specifically show a twist grip handle.

Gilliland et al. teaches a fork lift truck with a twist grip handle (90). The grip handle has a smooth outer grip (smooth is a relative term; however as seen in Figure 5, the grip is smooth from one end to the other). The grip has recessed grooves (see Figure 6). The grip is a plastic (see column 4, lines 25-27); while urethane can be considered to be a thermoplastic, if it is found that urethane is not a thermoplastic, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the grip to use a thermoplastic material as the selection of a known material based on its suitability of use involves only routine skill in the art. Gilliland et al. also teaches a horn switch (86) on the handle control.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Haack et al. with the teachings of Gilliland et al. to use a twist grip handle in order to provide a simple control mechanism for the vehicle.

Regarding claim 10, while Haack et al. does not disclose the exact height of the control handle, it would have been obvious to one of ordinary skill in the art at the time the invention was made to construct the handle at substantially thirty eight inches from the floor in order to provide a comfortable height for the user.

Regarding claim 12, as the grip handle is rotational in a first direction for a motion in a first direction, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the second handle be rotational in a second direction for a motion in a second direction each grip would be rotated the same direction depending on the direction the occupant was facing.

Regarding claim 19, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the handle angle at any comfortable angle, such as seventy degrees, as the change of degree involves only routine skill in the art. In re Aller et al., 105 USPQ 233.

### *Conclusion*

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Pollish, Jr. shows a fork lift with controls in two directions. Oshima et al. shows a vehicle with two opposite control stations. Henshaw et al. shows a vehicle with a handle control and steering wheel.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Dunn whose telephone number is 571-272-6670. The examiner can normally be reached on Mon-Fri, 8:30-5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Dickson can be reached on 571-272-6669. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David Dunn  
Primary Examiner  
Art Unit 3616